



Position Paper

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EurECCA CALLS FOR HIGH SOCIAL STANDARDS IN EUROPE AND PREVENTS CABIN CREW BOGUS SELF-EMPLOYMENT AS A RACE TO THE BOTTOM ON LABOUR CONDITIONS

Due to the fact of unharmonized employment and tax laws/regulations within the EU, some airlines are trying to use all opportunities to survive in a highly cost competitive market. To achieve the most possible revenue it becomes more and more attractive to hire cabin crew on atypical forms of employment such as bogus self-employment.

We know that Air Transport is a highly cost-sensitive sector and even more now. This puts pressure on labor costs. Low Cost Carriers (LCCs), in particular, experience much greater variation in demand between the high and low season.

These “ups and downs” as well as the cost competition within the airline industry puts a premium on more flexible but mostly atypical forms of employment. Some flexible employment arrangements are low-standing and widely used e.g. wet leasing and temporary cabin crew to cover the peak summer season whereas others are more recent in origin e.g. bogus self-employment and “pay-to-fly” contracts. As a result of the wide use of the before mentioned employment arrangements the cost-competition between airlines increases dramatically.

What means bogus self-employment when it comes to air transport?

Bogus self-employment is commonly understood as involving persons/workers registered as self-employed whose conditions of employment are similar to dependent employment. Where bogus self-employment exists, this often leads to other forms of undeclared work, such as under-declared work as well as tax and social security fraud.

For example, some airlines calculate cabin crew pay on the basis of “per scheduled hour”, but the actual flight time is often longer than the scheduled flight time.

Under-declared work can be more difficult to determine when the habitual place of work of cabin crew is not respected or when cabin crew are not considered as “posted workers”. Therefore, cabin crew based outside their “home country” might be paid according to the lower wage of their country of origin instead of in accordance with the host country’s wages and labour rights. Given the transnational nature of air transport, the sector is especially exposed to potential non-compliance with applicable laws and misapplication of EU legislations, mainly because both aircraft and cabin crew are highly mobile. Sadly, there are only few cases of labour inspections helping to prevent the extensive use of bogus self-employment and its crucial consequences.

In Member States where this arrangement is incompatible with national employment and/or tax laws, direct employment is circumvented by requiring workers to operate for the airline as contractors under an “umbrella company” as well as undirect employment under temporary agencies.

What could we do to prevent bogus-self-employment?

For a sustainable solution to the problems, the conventions of Brussels 1 and Rome 1 must be enforced.

Within the EU the responsibility for enforcement of laws in the different members states is not harmonized. In some member states the respective civil courts are in charge to enforce laws. In other member states there are indicated public institutions or state services that are responsible.

To successfully prevent the use of bogus-self-employment, EurECCA supports the regulations of TFEU article 153 and demands that the EU should set up the minimum requirements as described in regulation TFUE article 153 to guarantee high social level standards throughout its mechanisms. Furthermore, the EU should encourage the member states to cooperate with each other to share knowledge to learn and build up concrete measures and capacities against the use of bogus-self-employment.

Possible harmonization according to TFEU article 116 regarding laws enforcement mechanisms in the member states and in the European legislation would have decisive advantages when it comes to the prevention of bogus self-employment. In addition to the harmonization of law enforcement it is crucial to also harmonize the concept of self-employment at a legal level within the EU. The role of cabin crews with its specifics e.g. link of subordination, no autonomy or performing services under the direction of another person does not fulfill with the criterias that characterise self-employment.

EurECCA represents, protects and develops the rights and needs of cabin crew all over Europe